



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 20, 1998

Ms. Elizabeth Dierdorf
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR98-1267

Dear Ms. Dierdorf:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 115503.

The City of Fort Worth Fire Department (the "city") received a request for the personnel files of the requestor, Ms. Artie Dawson, Mr. Ken Nealy, Mr. Larry Taylor, and Mr. Tom Haggard. The requestor also seeks the "original letter sent by the 'concerned citizen' who alleged these complaints on myself and FF. Dawson." You state that you have released the requestor's own personnel file and the requested letter. You claim that the remaining requested personnel files are excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the sample of documents that you have submitted.¹

Section 143.089 of the Local Government Code works in conjunction with section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." You represent that the documents at issue "are personnel files maintained by the Fire Department

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

administration pursuant to" section 143.089(g) of the Local Government Code. Section 143.089 of the Local Government Code contemplates two different types of personnel files, one that the city's police department is required to maintain as part of the police officer's civil service file, and one that the city's police department may maintain for its own internal use. Local Gov't Code § 143.089(a), (g).

Section 143.089(g) reads as follows:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director [of the civil-service commission] or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

Subsection (g) authorizes city police and fire departments to maintain for their own use a file on a police officer or fire fighter that is separate from the file maintained by the city civil service commission. "The department may not release any information contained in the department file to any agency or person," but instead "the department shall refer to the director [of the civil-service commission] or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file." Local Gov't Code § 143.089(g); *see City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 952 (Tex. App.--Austin, 1993, writ denied).

In cases in which a city's fire department takes disciplinary action against a firefighter, it is required by Local Government Code section 143.089(a)(2) to transfer records relating to the investigation and disciplinary action to the civil service commission. Such records may not be withheld under section 552.101 of the Government Code. Local Gov't Code § 143.089(f); Open Records Decision No. 562 (1990) at 6. You represent that the documents at issue are the personnel files maintained by the Fire Department administration pursuant to section 143.089(g) of the Local Government Code. Thus, presuming that none of the submitted documents are maintained in the firefighters' civil service personnel file, we conclude that the city must withhold the requested materials from disclosure under section 143.089(g) of the Local Government Code in conjunction with section 552.101 of the Government Code.²

²We also assume that the city has complied with the procedural requirement of section 143.089(g) by referring the requestor to the civil service director at the time the requests were made. You do not argue, and this ruling does not address, whether the civil service files on these firefighters, which are maintained pursuant to section 143.089(a) and (b), are excepted from required public disclosure.

Because we resolve this matter under section 552.101 of the Government Code, we do not address your other claimed exception. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref: ID# 115503

Enclosures: Submitted documents

cc: Captain Les Burks
Fort Worth Fire Department
3rd Floor, Public Safety Building
1000 Throckmorton Street
Fort Worth, Texas 76102
(w/o enclosures)